IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 14421 of 2004

Between:

1. G. Nageswara Naidu, S/o Late Gorla Chinna Ananthaiah,Hindu, Major,
2. G. Nagabhushanam, S/o Late Gorla Chinna Ananthaiah,Hindu,Major,
3. G. Nagamuni Naidu, S/o Late Gorla Chinna Ananthaiah,Hindu, Major,
4. G. Rajagopal Naidu, S/o Late Gorla Chinna Ananthaiah,Hindu,Major. (All petitioners are residing at Cherlopalli Village, Owk Mandal, Kurnool District).

..... PETITIONERS

AND

The Special Deputy Collector (LA), S.R.B.C. Nandyal, Kurnool District.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or order direction more one in the nature of Writ of Mandamus declaring the endorsement in R.Dis.53A/2004 dt. 4-5-2004 issued by the respondent in rejecting the application of the petitioners submitted under Section 28-A of the Land Acquisition Act on the ground that the applications are time barred as illegal, arbitrary and contrary to Section 28-A of the Land Acquisition and consequently direct the respondent to redetermine the market value of the lands of the petitioners in Award No. 26/1992-93 dt. 30-3-1993 in terms of the Judgment and decree in O.P.No. 30/98 and batch dt. 4-12-2003

For the Petitioner: MR.M.SUBBA REDDY, Advocate

For the Respondent : GP FOR LAND ACQUISITION

The Court at the admission stage made the following:

ORDER

The petitioners' land was acquired by the respondent under the provisions of the Land Acquisition Act, 1894 (for short "the Act") for the purpose of formation of Borrow Area (Casing Soil) for formation of Bund across Gollaploru valley Embankment under Owk Valley Complex. After conducting enquiry, the respondent passed an award No.26/1992-93. The petitioners have not availed the benefit of reference under Section 18 of the Act. But on coming to know of the enhancement made by the reference court for the lands covered by the very same notification in OP No.30/98 and batch, the petitioners made an application under Section 28-A of the Act on 27-3-2004 seeking re-determination of the compensation, after excluding the time taken for obtaining certified copy of the judgment in OP No.30/98 and batch. The same was rejected by the respondent through his endorsement dt. 4-5-2004 in the light of the instructions issued by the Commissioner of Land Revenue, A.P.Hyderabad in Lr.No.G1/3629/90 dt. 31-12-1990 followed by instructions in letter No.G1/47/98 dt. 15-5-1998, wherein it was stated that the application under Sec.28-A of the Act must be filed before the concerned Land Acquisition Officer within three months from the date of award passed by a court having original jurisdiction and the applicants who filed the petition under Sec. 28-A have to receive the amount of compensation under protest.

It is well settled that time spent for obtaining certified copy of the order has to be excluded while computing the period of 90 days for filing application under Sec. 28-A.

On coming to know of passing of the award, copy application was made on 19-12-2003 and same was made ready on 20-1-2004 Therefore application filed on 27-3-2004 is well within the time of limitation of 90 days as contended by the petitioner (subject to verification by the Land Acquisition Officer). The second ground on which application was rejected that the claimants have not received compensation under protest cannot be sustainable in the light of the law declared by the larger Bench of the Apex Court in UNION OF INDIA V. HANSOLI DEVI (2002(7) SCC 273).

In view of the same, impugned endorsement is set-aside and respondent is hereby directed to re-determine the compensation in the light of the award and decree in OP No.30/98 and batch dt. 4-12-2003 within a period of three months from the date of receipt of a copy of the order and pay the differential compensation payable to the petitioners on such re-determination.

The writ petition is accordingly allowed. No costs.

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A.GOPAL REDDY,J

Dt. 25-10-2004

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To

1. The Special Deputy Collector (LA), S.R.B.C. Nandyal, Kurnool District.

2. 2CCs to the Government Pleader for Land Acquisition, High Court Buildings, Hyderabad (OUT).

3. 2CD copies